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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL BLAKE DeFRANCE,

Defendant.

CR 21-29-M-DLC

**DEFENDANT DeFRANCE'S
NOTICE OF SUPPLEMENTAL
AUTHORITY L.R. CR 47.4**

NOTICE

On Friday, April 21, 2023, the parties filed their respective trial briefs. In the government's trial brief at pages 10-11, the United States references a plea agreement that "would have been more beneficial to the defendant than a conviction following trial." The brief further states that "[t]he plea agreement represented, in the government's view, the most favorable offer extended to the defendant." Further

the government requested that “the Court make an inquiry to ensure the record is protected.” (See ECF No. 166, pp. 10-11).

In response to this, the defense raises the issue of inconsistent theories in its trial brief at ECF 167, pp. 13-14. The following decisions relate to this discussion and are offered as supplemental authority:

Thompson v. Calderon, 120 F.3d 1045, 1057–59 (9th Cir.1997) (en banc plurality) (holding that a defendant's due process rights were violated where the prosecution argued at his trial that he alone committed a murder, but argued at a subsequent trial that another defendant actually committed the same murder and, in doing so, “discredited the very evidence” it had offered in the first trial), rev'd on other grounds, 523 U.S. 538 (1998).

In *Bradshaw v. Stumpf*, 545 U.S. 175 (2005), petitioner, Stumpf, and another man, Wesley, carried guns to the home of Mr. and Mrs. Stout, intending to commit an armed robbery. 125 S.Ct. at 2402. Stumpf admitted that he shot Mr. Stout, but denied that he shot Mrs. Stout. Id. at 2403. Stumpf argued that the prosecutor has asserted inconsistent theories regarding who actually shot Mrs. Stout. The Supreme Court stated that the precise identity of the triggerman was immaterial to Stumpf's conviction of the aggravated murder of Mrs. Stout because both men could be found guilty of the crime under Ohio law, either as the shooter or as an aider and abettor. Id. at 2406. Therefore, the Supreme Court held that “[t]he Court of Appeals was wrong to hold that prosecutorial inconsistencies between the Stumpf and Wesley cases required voiding Stumpf's guilty plea.” Id. at 2407. However, the Supreme Court held that inconsistent theories might have a more direct effect in the sentencing phase of Stumpf's case and remanded it for consideration of whether the prosecutor's action amounted to a prejudicial due process violation in connection with Stumpf's sentencing. Id. at 2407-08.

CONCLUSION

WHEREFORE, Mr. DeFrance concludes his notice of supplemental authority pursuant to L.R. CR 47.4.

RESPECTFULLY SUBMITTED this 23rd day of April, 2023.

/s/ Michael Donahoe

MICHAEL DONAHOE

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CERTIFICATE OF SERVICE
L.R. 5.2(b)

I hereby certify that on April 23, 2023, a copy of the foregoing document was served on the following persons by the following means:

1 CM-ECF

2 Mail

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